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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Deployment of Wireline Services Offering)
Advanced Telecommunications Capability)

CC Docket No. 98-147

COMMENTS OF PAGING NETWORK, INC.

PAGING NETWORK, INC.

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Summary

PageNet is the wireless industry leader in the number of messaging subscribers, and in its commitment to providing a vast array of high-speed, high-information content services. In addition to providing traditional paging services in the United States, Canada and Spain, the company currently provides a full range of messaging services, including Internet messaging services, assured-delivery messaging and two-way interactive messaging. PageNet is also developing customized applications for large business customers that enable Intranet and Internet access for those companies' workers. In order to offer these services, PageNet relies on high-capacity facilities throughout the country.

Because both wireline and wireless consumers may desire access to advanced service, the Commission can and should remain technology and carrier neutral in its approach to Section 706 issues. Unfortunately, the Commission's ILEC advanced services affiliate proposal accomplishes neither goal and, ultimately, may favor inefficient deployment of particular advanced telecommunications technologies by ILECs in a way that compromises the goal of assuring that advanced telecommunications technology remains available to all Americans.

The Commission's ILEC advanced services affiliate proposal is particularly dangerous because it prematurely threatens to halt the development and begin the decline of the public switched network ("PSN"). In paragraph 117 of the NPRM, the Commission notes that several states have asked how, in light of the ILEC advanced service affiliate proposal, ILECs can be provided with incentives to continue to innovate and invest in the PSN. The Commission itself posits how it can "ensure that incumbent LECs that choose to offer advanced services through affiliates do not allow their existing ILEC networks to degrade." PageNet respectfully submits

that the Commission must respond to the states with a reasoned explanation of its implicit plan to abandon the concept of an evolving PSN *and* have in place an answer to its questions regarding PSN degradation *before* it moves forward with its separate affiliate proposal.

Nevertheless, if the Commission is determined to proceed with its well-intentioned but misguided ILEC advanced affiliate proposal, PageNet submits that there are several rules that can be adopted so that the Commission's unarticulated goal of forcing the ILECs to comply with their operational support systems ("OSS") and loop unbundling obligations under Section 251(c) can be effectuated to the fullest extent possible. To achieve this goal, ILEC affiliates must not benefit from any advantages of incumbency. In addition to the Commission's seven proposed rules for separation, ILEC affiliates, like wireless competitors, should not have the benefit of sharing an ILEC's brands, management or employees. Like local competitors, they should start from scratch with no preexisting or transferred network or customers.

In the absence of demonstrated advanced telecommunications capability deployment shortfalls, PageNet submits that the Commission's collocation reform and loop unbundling proposals are the types of actions that currently are best suited to ensuring that the appropriate regulatory environment exists to facilitate the deployment of advanced telecommunications capability. Along with the Commission's new focus on enforcement, as evidenced by its adoption of the "Accelerated Docket," these proposals, if adopted in addition to those contained in Section III hereto, will encourage the deployment of advanced telecommunication capability by working toward full implementation of Section 251(c) and the development of effective local competition.

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COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc ("PageNet"), by its attorneys, respectfully submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("706 NPRM" or "NPRM") issued in the above-captioned docket.¹ As set forth below, PageNet generally supports the Commission's proposals to adopt additional collocation rules and to define additional, or redefine existing, unbundled network elements ("UNEs"). Those steps prudently will spur the deployment of advanced telecommunications capability by pushing incumbent local exchange carriers ("ILECs") toward full implementation of the core pro-competitive provisions of the Telecommunications Act of 1996 ("1996 Act"), while assuring that the ILEC network remains robust.² However, PageNet vehemently opposes the Commission's proposed authorization of ILEC advanced service affiliates. That proposal is neither carrier nor technology neutral, as it myopically picks ILECs and xDSL technology as a one-size-fits-all resolution to extraordinary and fact-specific cases that have not yet been made.

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order, and Notice of Proposed Rulemaking (rel. Aug. 7, 1998) (hereinafter "MO&O/NPRM"). See Public Notice, CC Docket Nos. 98-146, 98-147, DA 98-1624 (rel. Aug. 12, 1998)(extending filing dates for comments and replies on the NPRM).

² Pub.L. 104-104, February 8, 1998, *amending* the Communications Act of 1934 ("Act").

INTRODUCTION

PageNet is the wireless industry leader in the number of messaging subscribers, and in its commitment to providing a vast array of high-speed, high-information content services. In addition to providing traditional paging services in the United States, Canada and Spain, the company currently provides a full range of messaging services, including Internet messaging services, assured-delivery messaging and two-way interactive messaging. PageNet is also developing customized applications for large business customers that enable Intranet and Internet access for those companies' workers.

In order to support this network, PageNet relies on high-capacity, broadband facilities throughout the country. For example, PageNet currently relies on an OC 48 SONET ring in California, which allows PageNet and Pacific Bell the assurance that the high volume of calls originated by Pacific Bell's customers will, in fact, be completed. Throughout the country, there are other high-capacity optical facilities supporting the interoffice transport of traffic to PageNet, and soon, but to a substantially lesser degree, supporting the two-way traffic between PageNet and ILECs.

PageNet supports the Section 706 goal of ensuring the deployment of advanced telecommunications capability to all Americans. Further, PageNet applauds the Commission for steps it already has taken in this regard through the opening of its Section 706 Notice of Inquiry ("706 NOI")³ and the issuance of its first Memorandum Opinion and Order in this docket ("706

³ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Notice of Inquiry (rel. Aug. 7, 1998) (hereinafter "NOI").

Order"). In its 706 NPRM, however, PageNet believes that the Commission has taken an approach that is focused far too narrowly. Indeed, *wireless* technology – as opposed to wireline technologies exclusively focused on by the Commission in the NPRM – may be better suited to realizing the Section 706 goal of deploying advanced telecommunications infrastructure to all Americans, and is the only technology which can offer advanced telecommunications services to mobile users, who have an equal entitlement to the availability of such services.

Because both wireline and wireless consumers may desire access to advanced service, the Commission can and should remain technology and carrier neutral in its approach to Section 706 issues. Unfortunately, the Commission's ILEC advanced services affiliate proposal accomplishes neither goal and, ultimately, may favor inefficient deployment of particular advanced telecommunications technologies by ILECs in a way that compromises the goal of assuring that advanced telecommunications technology remains available to all Americans.

The Commission's ILEC advanced services affiliate proposal is particularly dangerous because it prematurely threatens to halt the development and begin the decline of the public switched network ("PSN"). In paragraph 117 of the NPRM, the Commission notes that several states have asked how, in light of the ILEC advanced service affiliate proposal, ILECs can be provided with incentives to continue to innovate and invest in the PSN. The Commission itself posits how it can "ensure that incumbent LECs that choose to offer advanced services through affiliates do not allow their existing ILEC networks to degrade." PageNet respectfully submits that the Commission must respond to the states with a reasoned explanation of its implicit plan to abandon the concept of an evolving PSN *and* have in place an answer to its questions regarding PSN degradation *before* it moves forward with its separate affiliate proposal.

For example, PageNet views the deployment of optical fiber capacity, such as OC 48 SONET, in some contexts, as constituting unbundled network elements essential for the deployment of certain types of local services and efficiency. It would be very detrimental if these types of facilities were no longer available through the ILECs, as the absence of these types of interoffice facilities could disrupt the ease and speed and breadth at which ILEC subscribers can communicate with wireless subscribers and, thus, negatively affect the wireless communications services offered. The lack of these facilities also negatively affect the perception of the quality and robustness of such services by consumers of both wireline and wireless telecommunications.

With facilities-based local competition in its mere infancy, and with ILECs maintaining *de facto* monopoly control with in-territory market shares in the 99% range, it simply is too early to relegate the PSN – and Section 251(c) – to yesterday's technology. Yet, based on the false pretense that the benefits of incumbency accrued and still enjoyed by the ILECs somehow do not extend beyond bottleneck copper pairs, the Commission has set forth in ILEC advanced affiliate proposal that threatens to artificially bifurcate ILEC networks by giving ILECs the incentive to deploy and replace equipment with "advanced" facilities that fall outside the reach of the Section 251(c) cost-based unbundling and avoided-cost resale requirements.

In such an environment, there are likely to be many cases – predominantly in high-cost and less affluent areas – where only ILECs have the economies of scale and preexisting network infrastructure (both the product of near-total market share) to support deployment of certain advanced capabilities that carriers of all kinds, including local competitors, long distance carriers and wireless providers like PageNet, may or soon will need to access in order to provision their

own traditional or advanced services effectively. In these cases, and under the Commission's proposal, ILEC affiliates will be deregulated and virtually unfettered in their ability to extract monopoly rents from end users and carrier customers. Thus, in those areas that were of the greatest concern to Congress, the Commission's proposal likely will drive up the costs of *all* telecommunications services – traditional and advanced alike, at least until such time as actual competition can take hold. It is difficult to imagine a result more contrary to the goals of the 1996 Act as a whole, and Section 706 in particular.

Nevertheless, if the Commission is determined to proceed with its well-intentioned but misguided ILEC advanced affiliate proposal, PageNet submits that there are several rules that can be adopted so that the Commission's unarticulated goal of forcing the ILECs to comply with their operational support systems ("OSS") and loop unbundling obligations under Section 251(c) can be effectuated to the fullest extent possible. To achieve this goal, ILEC affiliates must not benefit from any advantages of incumbency. In addition to the Commission's seven proposed rules for separation, ILEC affiliates, like wireless competitors, should not have the benefit of sharing an ILEC's brands, management or employees. Like local competitors, they should start from scratch with no preexisting or transferred network or customers.

In the absence of demonstrated advanced telecommunications capability deployment shortfalls, PageNet submits that the Commission's collocation reform and loop unbundling proposals are the types of actions that currently are best suited to ensuring that the appropriate regulatory environment exists to facilitate the deployment of advanced telecommunications capability. Along with the Commission's new focus on enforcement, as evidenced by its adoption of the "Accelerated Docket," these proposals will encourage the deployment of

advanced telecommunication capability by working toward full implementation of Section 251(c) and the development of effective local competition.⁴

Along these lines, PageNet believes that the Commission can and should do more than it has proposed. First, the Commission should ensure cost-based access to broadband loop and transport technologies until such time as the markets for those services are sufficiently competitive so that the advantages of incumbency largely have been overcome by market forces. It can accomplish this by making clear that xDSL-equipped and other electronically enhanced loops must be unbundled at cost-based rates. It can also define certain functionalities offered over common configurations, such as SONET, as network elements. Following the precedent established with respect to its shared transport UNE, the Commission should establish UNEs that encompass the functionalities offered by dedicated transport and multiplexing, as well as dedicated transport and switching.

I. THE COMMISSION'S ILEC ADVANCED SERVICES AFFILIATE PROPOSAL IS NEITHER CARRIER NOR TECHNOLOGY NEUTRAL

PageNet urges the Commission to abandon its ILEC advanced services affiliate proposal because it is neither carrier nor technology neutral. Moreover, the proposal is a grossly premature and dangerously ill-fitting solution to a problem that has not been identified properly. If the Commission were to adopt the proposal, it would be akin to a physician ordering a body cast or surgery to treat vague and general patient complaints that have yet to be examined and

⁴ PageNet notes that the Commission's new enforcement commitment has not yet shown its potential benefit, as the Commission apparently remains hesitant to exercise its authority. However, until it does exercise that authority, and require ILECs to comply with the Act, local competition will not take hold.

diagnosed – it is premature, clumsy and may cause complications that significantly overshadow those it was intended to address.

Significantly, in charging the Commission with the goal of encouraging the deployment of advanced telecommunications capability, Congress defined the term “without regard to any transmission media or technology.”⁵ Properly interpreting this charge in the context of the 1996 Act as a whole, the Commission noted in the opening paragraphs of its 706 Order/NPRM, “Congress provided the blueprint in the 1996 Act . . . [t]he role of the Commission is not to pick winners or losers, or select the ‘best’ technology to meet consumer demand, but rather to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of consumers.”⁶ The commission also recognized that “Congress made clear that the 1996 Act is technology neutral.”⁷ Yet, despite setting forth what appears to be a well considered and firm grasp of the task at hand, the Commission put forth a proposal which would anoint the ILECs as the preferred carriers and xDSL as the chosen technology for bringing advanced telecommunications capability to all Americans.

PageNet respectfully submits that, before the Commission proceeds with its ILEC advanced service affiliate proposal, it should demonstrate how that proposal merely *encourages* ILECs to invest even more heavily in xDSL technologies and does not *favor* (as PageNet believes they do) those carriers and that group of technologies at the expense of others. In so doing, PageNet believes that it would be prudent for the Commission to consider the effect its

⁵ 47 U.S.C. §157 note (Section 706(c)(1))(hereinafter “Section 706”).

⁶ MO&O/NPRM, ¶¶1-2.

⁷ *Id.* at ¶11.

approach could have on the advanced telecommunications capability deployment plans of *wireless*, as well as wireline carriers. Indeed, *wireless* technology for both mobile and fixed users may be better suited to realizing the Section 706 goal of deploying advanced telecommunications infrastructure to all Americans in many situations.

Moreover, freeing ILECs' advanced facilities and services from the Section 251(c) cost-based unbundling and avoided-cost resale requirements (through the use of an affiliate) may limit the opportunities for competitive local exchange carriers ("CLECs") to deploy their own advanced facilities and offer advanced services on a wider scale. Clearly, Congress contemplated that CLECs would need to use both resale and unbundling as stepping stones prior to being able to deploy and rely exclusively on their own facilities. There simply is no evidence that the statutory language, congressional intent or basic economics that underpin the pro-competitive provisions of the 1996 Act apply differently when the telecommunications facilities and services involved are characterized as "advanced."

Some might ask why this matters to PageNet. Quite simply, it matters to PageNet because Section 251(c) and the development of local competition promise to bring down PageNet's costs. By necessity, PageNet must incorporate or rely on local service functionalities in its own local service offerings. As a general matter, the price of these components will be less expensive if incumbents are obligated to offer them at "cost-based" rates and if they need to respond to competitive service offerings of any kind. Moreover, there are circumstances in which the ILECs themselves will need to rely on such services in order to deliver ILEC-originated traffic to other local carriers, such as PageNet, for transport and termination, and these must continue to be available within the ILEC network for these purposes.

Importantly, it remains to be determined which capabilities are advanced and whether they are being deployed in a timely manner. The Commission concurrently is conducting an NOI for the purpose of exploring these issues. Until that NOI is completed, PageNet believes it is premature for the Commission to propose special action to give ILECs additional encouragement to deploy advanced telecommunications capability. Indeed, the Commission's ILEC advanced service affiliate proposal may not even address fact-specific shortcomings that may become evident – let alone address them in an efficient, nondiscriminatory and technology neutral manner.

Thus, PageNet submits that extraordinary measures to address advanced telecommunications capability shortcomings most prudently will be taken in the context of fact-specific, case-by-case reviews. For example, the Commission currently is considering an "Emergency Petition" by Bell Atlantic concerning the deployment of advanced telecommunications capability in West Virginia.⁸ Despite the fact that the Commission has yet to reach conclusions on several core definitional issues related to such deployment, the record in that proceeding clearly reveals that the bandwidth famine claimed by Bell Atlantic simply does not exist in West Virginia. Indeed, several carriers provide or are planning to provide the very services Bell Atlantic claimed only it was capable of or interested in provided to West Virginians.⁹ PageNet believes that several lessons can be learned from the Bell Atlantic-West Virginia proceeding. First, the market generally will respond to advanced telecommunications

⁸ *In the Matter of Emergency Petition of Bell Atlantic-West Virginia for Authorization to End West Virginia's Bandwidth Crisis*, CC Docket No. 98-11 (filed July 22, 1998).

⁹ *See, e.g.*, Comments of Helicon Corporation, CC Docket No. 98-11, at 5 (filed Aug. 10, 1998); Comments of Allegheny Communications Connect, Inc., CC Docket No. 98-11, at 2 (filed Aug. 10, 1998).

infrastructure needs. Second, various or multiple types of carriers are capable of responding to consumer demands for advanced telecommunications infrastructure. In this example, apparently CLECs and IXC's responded to consumer demand. Next time, it might be a wireless or satellite service provider. And, third, Bell Operating Companies ("BOCs"), and other ILECs, will continue to waive the Section 706 banner in an attempt to cloak their own efforts to free themselves from the pro-competitive provisions of the 1996 Act. Although they are often beguiling, the Commission should not validate specific statutory constructs that threaten to upend the 1996 Act as a whole. Congress established a comprehensive plan and that plan is working. Although the Commission can do much to ensure that the plan works better and more quickly, it should not alter the plan in the manner represented by its ILEC advanced service affiliate proposal.

II. THE COMMISSION'S ILEC ADVANCED SERVICE AFFILIATE PROPOSAL THREATENS TO PREMATURELY HALT THE DEVELOPMENT AND SPUR THE DEMISE OF THE PUBLIC SWITCHED TELEPHONE NETWORK

PageNet also urges the Commission to drop its ILEC advanced service affiliate proposal because it threatens to prematurely halt the development and spur the demise of the PSN. In paragraph 117 of the NPRM, the Commission notes that "some states have expressed concerns about an incumbent LEC's incentive to continue to innovate and invest in the public switched network." The Commission states that it shares this concern as well, as it seeks comment on how the Commission, in cooperation with its state counterparts, can "ensure that incumbent LECs that choose to offer advanced services through affiliates do not allow their existing ILEC

networks to degrade.”¹⁰ PageNet notes, however, that the expressed concern of the states’ and the Commission differ. The states’ concern with regard to innovation and investment contemplates a dynamic network that continues to evolve. On the other hand, the Commission appears to dismiss the issue of whether the PSN should continue to evolve and asks only how it can ensure that it does not begin to disintegrate. PageNet respectfully submits that the Commission’s apparent decision to arrest the development of the PSN cannot stand. Moreover, the Commission’s own question regarding the degradation of the PSN deserves an answer as well; the Commission cannot proceed in the manner proposed until it has, in concrete, a plan that will assure no degradation and will assure continued innovation within the ILEC network.

Indeed, it seems that the problems identified by the Commission and its state counterparts cannot be squared with the ILEC advanced affiliate proposal, without incorporating a requirement that an ILEC must duplicate the deployment made by its advanced service affiliate and must continue to offer and support the same unbundled functionalities that were possible prior to the ILEC’s establishment of an advanced service affiliate. These requirements could sunset simultaneously with a Commission decision to forbear, under Section 10 and consistent with Subsection 10(d) from enforcing Section 251(c)¹¹ Absent such requirements, the Commission’s proposal threatens to artificially bifurcate ILEC networks by giving ILECs the incentive to deploy new and replace old equipment outside the reach of the Section 251(c) cost-based interconnection/unbundling and avoided-costs resale requirements.

¹⁰ NPRM, at ¶117.

¹¹ A decision to forbear, of course, must be made only after a showing consistent with the statute; it is evident that no such showing can be sustained today, or in the foreseeable future.

Such artificial bifurcation would be premature and, as a result, quite costly. This is because local competition remains in a nascent state and carriers of all kinds remain dependent on cost-based, or at least tariffed, access to ILEC networks to complete their own service offerings. Furthermore, as the originating carriers, ILECs are obligated to provide their own facilities to transport traffic to the terminating carriers, and these facilities need to continue to be made available using state-of-the-art transmission speeds and capabilities.

Significantly, the scope of the functionalities required mirrors the scope of ILECs' current *de facto* monopolies in that it extends well beyond and is in no way limited to the local loop. Anticipating that this would be the case – and that the transition from a monopoly to a competitive paradigm would require a transition period – Congress did not limit the application of Section 251(c) to local loops or even the existing network. Rather, the cost-based interconnection and unbundling and avoided-cost resale obligations of Section 251(c) were intended to level all of the advantages associated with the ILECs' ubiquitous presence and century-plus head start in building a network on a going-forward basis, until competition had developed to a point where application of that section no longer was necessary. Congress also intended to assure that the ratepayer who paid for the development of the network, and the research and development that went into network enhancement, for all those years, continues to have the benefit of the bargain.

Nevertheless, under the bifurcated network structure that would result from the Commission's proposal, there are likely to be many cases – predominantly in high-cost and less affluent areas – where only ILECs have the economies of scale and preexisting network infrastructure to support deployment of certain advanced capabilities that carriers of all kinds,

including local competitors, long distance carriers and wireless providers, like PageNet, may or soon will need access to in order to provision their own traditional or advanced services effectively. In these cases, deregulated ILEC affiliates will be left virtually unfettered in their ability to extract monopoly rents from end users and carrier customers. Thus, in those areas that were of the greatest concern to Congress, the Commission's proposal likely will drive up the costs of *all* telecommunications services – traditional and advanced alike. It is difficult to imagine a result more contrary to the goals of the 1996 Act as a whole, and Section 706 in particular.

III. THE DETRIMENTAL EFFECTS OF THE COMMISSION'S ILL-CONCEIVED ILEC SEPARATE AFFILIATE PROPOSAL MAY BE REDUCED SOMEWHAT BY THE ADDITION OF CERTAIN PRO-COMPETITIVE REQUIREMENTS

As the foregoing sections demonstrate, PageNet believes that the Commission should reverse its course and refrain from adopting its ILEC advanced service affiliate proposal because such action profoundly would disserve the Section 706 goal of encouraging the deployment of advanced telecommunications capability to all Americans and would upend the foundational pro-competitive provisions of Section 251(c) in the process. Moreover, PageNet doubts whether Section 251 reasonably can be interpreted in the manner offered by the Commission in support of its creative proposal to free ILECs from – but not forbear from applying – the cost-based interconnection, unbundling and resale provisions of Section 251(c).¹² However, in the event that the Commission cannot be dissuaded from adopting some form of its ILEC advanced service

¹² Anticipating that the Commission will be inundated with comments expansively setting forth the legal arguments in support of this position, PageNet will forego such an exercise but reserves the right to address this issue, if necessary, on reply or in any reconsideration or appellate proceedings related to any Commission action in relation to the 706 NPRM.

affiliate proposal, PageNet requests that the Commission adopt the following conditions – in addition to the seven separation requirements already proposed in the NPRM. Each of the conditions proposed is consistent with the Commission's unarticulated goal of requiring the ILECs to meet their OSS and loop unbundling obligations under Section 251(c) and is guided by the principle that, like CLECs and all other unaffiliated carriers, ILEC advanced service affiliates must not benefit from any advantages of incumbency

Thus, in addition to the Commission's seven proposed rules for separation, ILEC affiliates should not be permitted to share or utilize in any way an ILEC's brands, management or employees. From its own competitive experience, PageNet can attest that its own competitors that share such resources with ILEC parents have a distinct advantage over those competitors that do not.

Like local competitors, ILEC advanced service affiliates should start from scratch with no preexisting or transferred network or customers. Section 251(h) was written and intended to prevent any ILEC attempts to shed their ILEC status. PageNet does not believe that Section 251(h) can be read in a way to permit such transfers – even if the customer accounts or equipment already were located in an affiliate. Further, PageNet cannot conceive of any circumstances where forbearance or a *de minimis* exception would be appropriate.

Moreover, every "service" or "feature" or "function" made available by the ILEC in any capacity to the advanced services subsidiary, or to any other division of the ILEC, must be made available to all those local carriers who make a request therefor, as either a service or an unbundled network element, depending on the specific facts.

IV. THE GOAL OF SECTION 706 IS BEST SERVED BY COLLOCATION AND UNBUNDLING POLICIES THAT MAXIMIZE OPTIONS AND MINIMIZE COSTS

Like virtually all other carriers that are faced to some degree with the task of interconnecting and competing with the ILECs, PageNet believes that the best course of action the Commission can take to encourage the timely deployment of advanced telecommunications capability involves the adoption and enforcement of rules designed to achieve full implementation of Section 251(c). Accordingly, PageNet supports the Commission's proposed collocation reforms and the adoption of additional unbundling rules.

With regard to unbundling, PageNet believes that the Commission can and should do more than it has proposed. First, the Commission should ensure cost-based access to broadband loop and transport technologies until such time as the markets for those services are sufficiently competitive so that the advantages of incumbency largely have been overcome by market forces. It can accomplish this by making clear that *xDSL-equipped* and other electronically enhanced loops must be unbundled at cost-based rates. The Commission also should make clear that an ILEC's obligation to unbundle transport – whether dedicated or shared – neither depends upon nor is limited by the type of technology used.

PageNet also submits that the Commission should define additional functionalities offered over common configurations as network elements. In upholding the FCC's definition of shared transport as a UNE, the Eighth Circuit recently confirmed that the Commission has the authority to take a functional approach to defining network elements that must be unbundled

pursuant to Section 251(c).¹³ Following that precedent, PageNet submits that the Commission should establish UNEs that encompass the functionalities offered by dedicated transport and multiplexing, as well as dedicated transport and switching. Both of these steps would remove substantial obstacles facing PageNet and would accelerate the efforts of other wireless providers that rapidly are emerging as potential alternative or complementary local service providers.

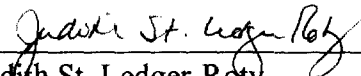
CONCLUSION

For all of the foregoing reasons, PageNet submits that the goal of Section 706 would best be served by Commission action in which it shelved its ILEC advanced service affiliate proposal and adopted collocation and unbundling rules that maximize options and minimize costs.

Respectfully submitted,

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¹³ *Southwestern Bell Tel. Co. v. FCC*, 1988 WL 459536 (8th Cir. Aug. 10, 1998)(affirming the FCC's determination that shared transport constitutes a network element that must be made available to new entrants on an unbundled basis